

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Corr Wireless Communications, LLC Petition for	)	DA 03-1893
Designation As An Eligible Telecommunications Carrier	)	
in Certain Rural Service Areas in the	)	
State of Alabama	)	

To: Wireline Competition Bureau

**COMMENTS  
OF THE  
ALABAMA RURAL LOCAL EXCHANGE CARRIERS  
("Alabama Rural LECs")**

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July 28, 2003

**Alabama Rural LECs:**  
Ardmore Telephone Company  
Blountsville Telephone Company, Inc.  
Brindlee Mountain Telephone Company, Inc.  
Butler Telephone Company, Inc.  
Castleberry Telephone Company, Inc.  
Graceba Total Communications, Inc.  
GTC, Inc.  
Gulf Telephone Company  
Hayneville Telephone Company, Inc.  
Hopper Telecommunications Company, Inc.  
Interstate Telephone Company  
Millry Telephone Company, Inc.  
Mon-Cre Telephone Cooperative, Inc.  
Moundville Telephone Company, Inc.  
National Telephone of Alabama, Inc.  
New Hope Telephone Cooperative, Inc.  
Oakman Telephone Company  
OTELCO Telephone LLC  
Peoples Telephone Company  
Ragland Telephone Company  
Roanoke Telephone Company, Inc.  
Union Springs Telephone Company, Inc.  
Valley Telephone Company

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## SUMMARY

The Alabama Rural LECs<sup>1</sup> file these comments in opposition to the Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) by CORR Wireless Communications, LLC (“CORR Wireless”) in certain rural service areas in the State of Alabama (“Corr Wireless Petition”). The companies making up the Alabama Rural LECs provide high-quality telecommunications service, on a universal basis, to rural telephone customers in their certificated service territories. Before being designated an ETC in Alabama, CORR Wireless should be required do the same. Moreover, unless the public interest will be served by its designation as an additional ETC in the service areas of the rural telephone companies involved, CORR Wireless’ ETC request must be denied. It is crucial that these statutorily mandated requirements be met. Otherwise, universal service dollars will not used as intended nor will those dollars remain available in the future.

The Alabama Rural LECs maintain that CORR Wireless does not meet the statutory and regulatory requirements for obtaining ETC designation and that the public interest is not served by CORR Wireless’s designation as a CETC in rural Alabama. At a minimum, the existence of the ongoing Joint Board proceeding on ETC issues must prevent, or at least delay, any action granting ETC status to CORR Wireless. To extend ETC status to CORR Wireless at this date would simply perpetuate, if not give incentive to, continued distorted competitive entry into the rural local telecommunications market.

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<sup>1</sup> See text of these Comments at 1-2 for definition.

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ALABAMA RURAL LOCAL EXCHANGE CARRIERS**

Ardmore Telephone Company, Blountsville Telephone Company, Inc., Brindlee Mountain Telephone Company, Inc., Butler Telephone Company, Inc.<sup>2</sup>, Castleberry Telephone Company, Inc., Graceba Total Communications, Inc., GTC, Inc. (formerly the Florala Telephone Company), Gulf Telephone Company, Hayneville Telephone Company, Inc., Hopper Telecommunications Company, Inc., Interstate Telephone Company, Millry Telephone Company, Inc., Mon-Cre Telephone Cooperative, Inc., Moundville Telephone Company, Inc., National Telephone of Alabama, Inc., New Hope Telephone Cooperative, Inc., Oakman Telephone Company, OTELCO Telephone LLC, Peoples Telephone Company, Ragland Telephone Company, Roanoke

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<sup>2</sup> On October 1, 1998, Grove Hill Telephone Corporation and Goshen Telephone Company, Inc., were merged with and into Butler Telephone Company, Inc. (d/b/a TDS Telecom).

Telephone Company, Inc., Union Springs Telephone Company, Inc. and Valley Telephone Company (collectively referred to and defined as the “Alabama Rural LECs”) by counsel, file these comments on the Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) by CORR Wireless Communications, LLC (“CORR Wireless”) in certain rural service areas in the State of Alabama (“Corr Wireless Petition”) in accordance with the Commission’s Public Notice released June 5, 2003, DA 03-1893.<sup>3</sup> Because CORR Wireless does not meet the statutory and regulatory requirements for ETC designation and because CORR Wireless has not demonstrated that the public interest would be served by its designation as an additional ETC in the service areas of the rural telephone companies involved, the Petition should be dismissed.

#### **I. SERVICE PROVIDED BY THE ALABAMA RURAL LECs.**

The Alabama Rural LECs are incumbent local exchange carriers (“ILECs”), which have provided high-quality telecommunications service, on a universal basis, to rural telephone customers in their certificated service areas in the state of Alabama for an average of over sixty (60) years and are certified as ETCs. The service areas covered by CORR Wireless’s petition include those of Ardmore Telephone Company, Blountsville Telephone Company, Inc., Brindlee Mountain Telephone Company, Inc., Butler Telephone Company, Inc. (d/b/a TDS Telecom), Hopper Telecommunications Company, Inc., New Hope Telephone Cooperative, Inc., OTELCO Telephone, LLC, and Peoples Telephone Company. Other Alabama rural local exchange carriers

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<sup>3</sup> While not a rural LEC, CenturyTel of Alabama, LLC supports and adopts the positions of the Alabama Rural LECs opposing ETC designations in rural areas.

have chosen to join these comments because of the dangerous precedent that will be set if CORR Wireless's Petition is approved as filed.

One of the largest Alabama cities served by the Alabama Rural LECs is Arab, Alabama. Arab, pursuant to 2000 Census figures, has a population of approximately 7,174<sup>4</sup>; the total residential access lines of Brindlee Mountain Telephone Company, Inc. ("Brindlee") for Arab are approximately 3,161. While it is virtually impossible to calculate the exact percentage of inhabited residences that subscribe to the services provided by Brindlee in this rural Alabama town, Brindlee estimates that ninety-five (95%) percent of the inhabited residences in Arab subscribe to its telephone service. In addition, the Alabama Rural LECs approximate that a similar percentage of inhabited residences located in their rural Alabama service areas subscribe to telephone service in their combined territory. The Alabama Rural LECs have worked with the APSC to ensure that service is available to all known inhabited rural residences in Alabama within their territory. They are subject to strict minimum service requirements and are required to respond to requests for service from any portion of their certificated area by prescribed deadlines.<sup>5</sup>

Of the companies composing the Alabama Rural LECs, Brindlee Mountain Telephone Company, Inc., Butler Telephone Company, Inc. (d/b/a TDS Telecom), Gulf Telephone Company, Graceba Total Communications, Inc., Hayneville Telephone Company, Inc., Hopper

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<sup>4</sup> U.S. Census Bureau, American Fact Finder, Basic Facts, Quick Tables, Alabama Quick Links, 2000 Demographic Profile for Alabama, Counties and Places, Arab City [http://factfinder.census.gov/servlet/QTTable?\\_ts=76932552860](http://factfinder.census.gov/servlet/QTTable?_ts=76932552860) (visited July 22, 2003).

<sup>5</sup> Rule T-21, Telephone Rules of the APSC.

Telecommunications Company, Inc., Millry Telephone Company, Inc., Oakman Telephone Company, OTELCO Telephone LLC, and Peoples Telephone Company, among others, provide telecommunications service to schools and libraries located within their territories. The children served include those located in the following rural cities and towns in Alabama: Arab, Alabama; Ashford, Alabama; Butler, Alabama; Centre, Alabama; Chatom, Alabama; Cottonwood, Alabama; Foley, Alabama; Florala, Alabama; Fruitdale, Alabama; Gilbertown, Alabama; Hayneville, Alabama; Millry, Alabama; Oakman, Alabama; Oneonta, Alabama; Silas, Alabama; and Walnut Grove, Alabama. The companies comprising the Alabama Rural LECs also provide Lifeline and Link Up service to eligible low-income customers located in their respective service areas in accordance with the mandates of 47 C.F.R. §§ 54.405 and 54.411 (2001).

Specifically, in late 1996, the Alabama Rural LECs implemented Lifeline reductions of \$7.00, which included a \$3.50 state component funded without a local rate additive to other local customers. Each of the Alabama Rural LECs has advertised these programs through various mechanisms, including bill inserts, public service announcements and through information made available through the APSC.<sup>6</sup> All of the companies have regularly upgraded the telecommunications plant within their service territory in an effort to improve telephone service and its reliability. In addition, in spite of the significant costs for small rural ILECs, companies have invested in CALEA-compliant software upgrades. In certain instances, they are also

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<sup>6</sup> *Implementation of the Universal Service Requirements Of Section 254 of Telecommunications Act of 1996*, Fourth Report and Order, APSC Docket 25980, (rel. Nov. 25, 1997), p. 24; *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Further Order, APSC Docket 25980, (rel. June 7, 2001).

required to participate in Extended Area Service arrangements.<sup>7</sup> The large majority of the Alabama Rural LECs have also adopted expanded area calling plans in an effort to improve rural calling options<sup>8</sup> and, on at least one occasion, have issued subscriber credits as a result.<sup>9</sup>

## **II. DESIGNATION OF CORR WIRELESS AS AN ETC IN RURAL ALABAMA SERVICE AREAS IS NOT IN THE PUBLIC INTEREST.**

“Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest.”<sup>10</sup> The burden should be

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<sup>7</sup> See, e.g., *Implementation of the Extended Area Service Plan for the Pineapple Exchange*, Order, APSC Informal Docket U-3271 (rel. May 7, 1990) (affecting Southland Telephone Company, Inc., now known as Frontier Communications of the South, Inc.).

<sup>8</sup> *All Telephone Companies in Alabama Investigation into 0-40 calling across vs. LATA Boundaries*, Order and Notice of Hearing, APSC Docket 22645 (rel. September 9, 1992); *Southland Telephone Company, Petition for Approval of Proposed Tariff Revisions to add the provisions for Area Calling Service (“ACS”)*, Order, APSC Docket 22293 (rel. Feb. 3, 1992); *Mon-Cre Telephone Cooperative, Inc., Petition for Approval of proposed Tariff Revisions to add ACS provision*, Order, APSC Docket 21777 (rel. September 14, 1992); *Hayneville Telephone Company Petition for Approval to Introduce ACS*, Order, APSC Docket 23385 (rel. Feb. 14, 1994); *Monroeville Telephone Company Petition to Introduce ACS*, Amended Order, APSC Docket 23521 (rel. May 11, 1994); *Grove Hill Telephone Corporation (now known as Butler Telephone Company, Inc.) Petition for Approval to Add Area Calling Plan*, Order, APSC Docket 24619 (rel. June 12, 1995); *Ragland Telephone Company Petition for Approval to Introduce ACS*, Order, APSC Docket 24619; *Moundville Telephone Company, Inc. Petition for Approval to Introduce ACS*, Order, APSC Docket 26408 (rel. May 10, 1999).

<sup>9</sup> *Moundville Telephone Company, Inc. Petition for Issuance of Credits to Subscribers*, Order, APSC Docket 26408 (rel. May 21, 1998).

<sup>10</sup> *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, CC Docket 96-45, 16 F.C.C.R. 48 (2000) (“*Western Wireless Wyoming Order*”) at para. 3; See also, *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Report and Order, CC Docket 96-45, 16 F.C.C.R. 18,133 (2001) (“*Western Wireless South Dakota Order I*”), at para. 3.



on the applicant to demonstrate that this test is met. Here, there is no system in place to ensure that high-cost funding will be linked to service actually provided in the high cost area, indeed, the likelihood is that it will not. There is, however, evidence that granting multiple ETC petitions will threaten the long-term viability of universal service in these rural areas. The designation of CORR Wireless as an additional ETC in the service area of the Alabama Rural LECs, is not in the public interest.

**A. The Cost of Granting CETC Status to CORR Wireless Outweighs the Benefits.**

CORR Wireless's Petition fails to provide any identification or quantification of the benefits of the grant of CETC status other than the most generalized platitudes regarding the benefits of competition (reasonable rates and new services). The public interest determination required by § 214 of the 1996 Act<sup>11</sup> requires more. The ETC designation process must address the Communications Act's "*dual* goals of *preserving universal service* and fostering competition."<sup>12</sup> The introduction of additional competition in rural areas alone does not equate with a public interest determination. ETC designations in rural areas must not be routinely

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<sup>11</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.* (Communications Act or Act). References to section 214(e) in these Comments refer to the provision of universal service by an ETC under this section of the 1996 Act, which is codified at 47 U.S.C. § 214(e) of the Act. Similarly, references to section 254 in these Comments refer to the universal service provisions of the 1996 Act, which are codified at 47 U.S.C. § 254 of the Act.

<sup>12</sup> *Federal-State Joint Board on Universal Service Seeks Comment on The Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, Public Notice, CC Docket 96-45, FCC 03J-1 (rel. Feb. 7, 2003) ("*Portability Proceeding*") (emphasis added).

justified by simply heralding the benefits of competition. Doing so renders § 214(e)(2) of the Act meaningless. The promotion of competition through an additional ETC designation in an area served by a rural telephone company is appropriate only after the public interest analysis has been diligently undertaken. Such analysis mandates recognition of the definite public costs that come from supporting two or more competing providers in rural markets. These costs include, but are not limited to, increased funding cost to support a larger fund size and increased network costs due to decreased network efficiency in sparsely populated rural areas.

**1. Increased Fund Size.**

As the number of CETCs receiving funding grows, the demands on the Fund will likewise grow. This is particularly true since, under current rules, both the ILEC and CETC receive funding if the customer retains service from both carriers. For benefits to exceed costs, it must be demonstrated that consumers are better off by more than the amount of increased funding. There is an interesting anomaly, however, that may cast question on the cost/benefit relationship of certain CETC applications.

Many carriers applying for CETC status already provide service to customers within the study areas where they seek CETC designation. These customers were obtained under business plans that did not anticipate or require explicit support. When such a carrier is granted ETC status, however, they often request funding for all of the existing customer lines. This results in a significant increase in the size of the Fund for little or no immediate benefit to consumers.

While the impact of portability of support to wireless carriers has been relatively modest to date, it has been growing at a significant rate.<sup>13</sup> In fact, the Commission commented on this trend:

[B]ased on Universal Service Administrative Company (USAC) data, competitive ETCS received approximately \$14 million out of \$803 million high-cost support disbursed in the third quarter of 2002, or 1.8% of total high-cost support. This is up from approximately \$2 million out of \$638 million high-cost support disbursed in the first quarter of 2001, or 0.4% of total high cost support.<sup>14</sup>

A further summary of the USAC data referenced by the Commission (assembled below in tabular form) indicates that the annualized amount of high-cost funding going to wireless providers with approved ETC status from the fourth quarter of 2001 through the first quarter of 2003 is rapidly growing.<sup>15</sup>

<u>Quarter</u>	<u>Annualized CMRS Funding</u>
4Q01	\$9.1M
1Q02	\$8.3M
2Q02	\$47.9M
3Q02	\$63.6M
4Q02	\$61.4M
1Q03	\$106.6M

As noted by the Commission, “as competitive ETCs enter new markets and expand services, they are increasingly qualifying for high-cost universal service support.”<sup>16</sup> In fact, publicly available data indicate that the impact of ETC status for all CMRS providers nationwide

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<sup>13</sup> *Id.*

<sup>14</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, FCC 02-307 (rel. Nov. 8, 2002) (“*Joint Board Referral*”) at paragraph 4.

<sup>15</sup> See USAC HC01 Reports for 4Q01 through 1Q03.

<sup>16</sup> *Joint Board Referral* at paragraph 4.

would increase the demand on the high-cost fund by over \$2B per year.<sup>17</sup> This potential explosion in the USF cannot be ignored.

Given these funding difficulties, even a fraction of this potential impact would seriously threaten the ability of USAC to pay support to existing ETCs. Since many local carriers rely on this support for a significant portion of their operating cash flow, any significant disruption of this support could have dire consequences for these carriers' ability to meet their service obligations to their customers, and clearly contrary to the public interest.

As the foregoing discussion illustrates, there is not an unlimited pool of money to fund all potential competitors to serve all high-cost rural areas. The federal high-cost universal service fund is indeed a scarce national resource that must be managed in such a way as to assure that the dual goals of universal service and competition are achieved. The 1996 Act states that multiple ETCs shall be designated in the area served by a rural telephone company only when such designation is found to be in the "public interest".<sup>18</sup> Surely the public interest is not protected when the granting of the application threatens the long-term viability of universal service to rural Alabamians.

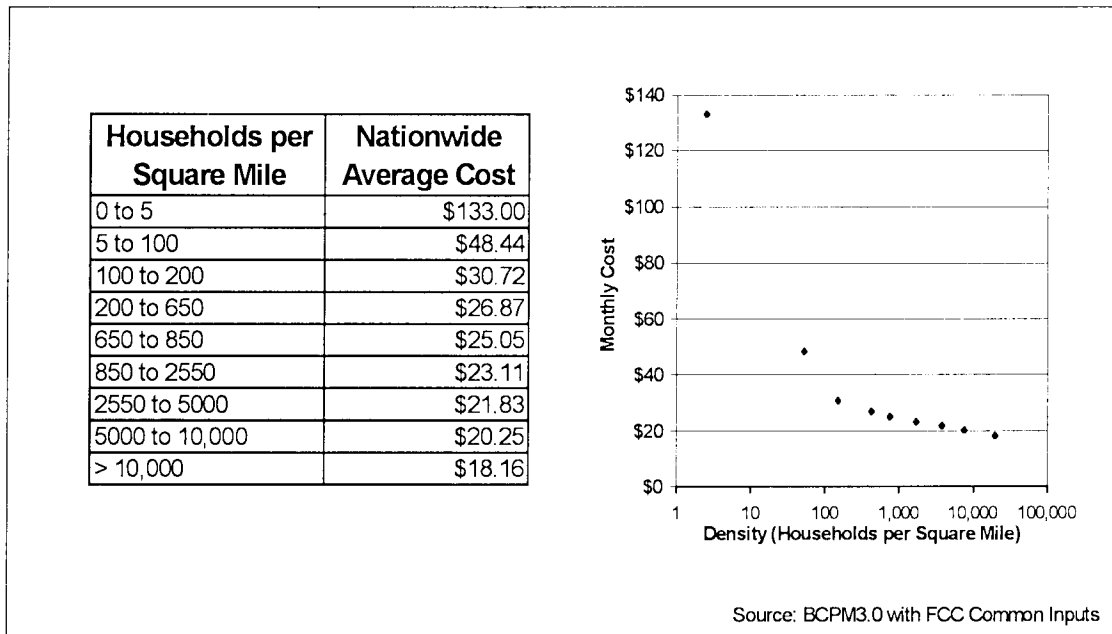
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<sup>17</sup> This number is derived by taking the ratio of wireless access lines to wireline access lines and multiplying this ratio (69%) by the current \$3.2 billion of federal high-cost report as stated on USAC HC01 for the first quarter of 2003. The 69% ratio was developed using data from Commission's Seventh Report to Congress regarding Competitive Market Conditions With Respect to Commercial Mobile Services, released Dec. 9, 2002, and USAC Report HC01 for the second quarter of 2002.

<sup>18</sup> 47 U.S.C. § 214(e)(2) and (6).

## 2. Network Efficiencies

There are very real costs associated with introducing multiple carriers in sparsely populated rural areas. This is so since the cost of building and maintaining a network is extremely sensitive to the density of the serving area. The following publicly available data taken from the Commission's proxy model proceeding clearly illustrates the relationship of density and cost<sup>19</sup>:



This chart shows the nationwide average monthly cost of providing basic telephone service in each of the 9 density zones identified by the Commission. What is clear from this data is that costs increase gradually with decreasing population density until around 100 households per square mile. Below this level, costs increase geometrically as subscriber density decreases. When two or more ETCs serve the same territory, the average subscriber density for each will be

<sup>19</sup> The data is taken from the BCPM 3.0 with FCC Common Inputs. The BCPM is the only model with publicly available data for all rural and non-rural study areas. Other proxy models show a similar relationship of density to cost.

less than if a single company served the same territory. This will have the impact of significantly increasing the average cost of serving all subscribers. The impact of this increase will be more dramatic the higher the percentage of lines in the two lowest density/highest cost density zones. The following data clearly shows that Butler Telephone Company, one of the rural Alabama carriers within the scope of CORR Wireless's petitioned service area, has a significant majority of its customers located in these lowest two density zones<sup>20</sup>:

**Household Density<sup>21</sup>**

<b>Study Area Name</b>	<b>Loops</b>	<b>% 0 to 5 HH/sq mile</b>	<b>% 5 to 100 HH/sq mile</b>	<b>% over 100 HH/sq mile</b>	<b>Average Study Area Density (HH/sq mi)</b>
Butler Telephone Company	8,771	9.5%	61.5%	29.0%	10.2

In his separate statement issued with the MAG Order, Commissioner Martin questioned creating "competition" in areas where costs are prohibitively expensive for even one carrier, and

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<sup>20</sup> Butler Telephone Company, Inc. is also within the scope of Cell South's Alabama service area, RCC's Alabama service area and the area covered by the Petition of ALLTEL Communications, Inc for ETC designation in Alabama. *See Cellular South License, Inc. Petition for Designation as Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3317, Memorandum Opinion and Order ("Cell South Order") (rel. Dec. 4, 2002) at Appendices B and C; *RCC Holdings, Inc. Petition for Designation as Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3317, Memorandum Opinion and Order ("RCC Order") (rel. Nov. 27, 2002) at Appendix C. *Alltel Communications, Inc. Petition for Designation as Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 03-1882. If the Corr and ALLTEL Petitions are granted, four CETCs will exist in the service area of Butler Telephone Company, Inc.

<sup>21</sup> Source: 2000 Census – Density at the Census Block Level.

where network inefficiencies cause a ballooning universal service fund.<sup>22</sup> The increased costs to all customers caused by this efficiency loss must also be considered in the cost/benefit calculus that is necessary to demonstrate that approving an additional CETC serves the public interest.

Unless it can be clearly demonstrated and proven that the benefits of having multiple ETCs and “competition” in sparsely populated rural areas exceed the substantial costs of both increased fund size and loss of network efficiency, then CORR Wireless’s Petition cannot be found to be in the public interest. The key to developing an effective universal service policy will be to define, with some specificity, exactly what the “public interest” means with respect to the definition of multiple ETCs in areas served by rural telephone companies. While some advocate that the mere introduction of competition itself satisfies the public interest,<sup>23</sup> the Alabama Rural LECs assert

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<sup>22</sup> Separate Statement of Commissioner Kevin J. Martin, *Second Report and Order and Federal Notice of Proposed Rule Making*, CC Docket 00-256; *Fifteenth Report and Order*, CC Docket 96-45, and *Report and Order* in CC Dockets 98-77 and 98-156 (rel. Nov. 8, 2001). Recent Court decisions have also taken a negative view of efforts to create artificial competition. In *U.S. Telecom Association v. FCC*, 290 F. 3d 415, 424 (2002), the U.S. Court of Appeals for the DC Circuit comments that the Commission needs to look at differentiated markets, and that “synthetic competition” is not what Congress had in mind. In *Verizon Communications, Inc. v. FCC*, 535 U.S. \_\_\_, Part II (2002), Justice Bryer (concurring in part and dissenting in part) states that the Statute supports competition “in so far as local markets can support that competition without serious waste.”

<sup>23</sup> See, e.g., *Petition of Cell South* as filed in *Cellular South License, Inc. Petition for Designation as Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3317, Memorandum Opinion and Order (“Cell South Order”) (rel. December 4, 2002) at 14 and 15 (stating that granting ETC status will “further the public interest by bringing the benefits of competition”; a principal goal of the 1996 Act is promoting competition; and, ETC designation “will bring to consumers the benefits of competition”).

that a better measure is to determine if benefits derived from supporting multiple carriers exceed the cost of supporting multiple networks.<sup>24</sup>

There is also a prevalent myth that there is currently no competition in rural America and that only by granting ETC status to wireless carriers will rural consumers experience the benefits of competition. Nothing could be farther from the truth. Wireless carriers serve throughout rural America. Exhibit A is a map that shows the number of wireless providers, by county, for the entire United States.<sup>25</sup> It clearly shows that no Alabama counties have fewer than three Commercial Mobile Radio Service (“CMRS”) providers, and most counties, even in rural parts of the state, have from four to seven CMRS providers.<sup>26</sup> There is nothing to suggest that ETC designation will increase this coverage, or more importantly, compel CMRS providers to extend service beyond their existing coverage to more remote areas of their service territory.

**B. Granting of ETC Status to CORR Wireless will Harm Consumers and Undermine the Universal Service Fund.**

Rural ILEC customers, like those currently served by the Alabama Rural LECs, do not “travel” with their telephones, which provides regulators with reasonable assurance that the universal service support they receive will be used “only for the provision, maintenance, and

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<sup>24</sup> See, McLean & Brown white paper, *USF Portability – Getting it Right* (June 25, 2002).

<sup>25</sup> Exhibit A is Map 1, Mobile Telephone Operator Coverage estimated by County, *In the Matter of Implementation of Section 6002(b) of the OBRA of 1993, Annual Report and Analysis of Competitive Market Conditions with respect to Commercial Mobile Services*, FCC 02-179, Seventh Report at Appendix E-2 (rel. July 3, 2002) (“Exhibit A”).

<sup>26</sup> *Id.*



upgrading of facilities for which the support is intended.”<sup>27</sup> In contrast, CORR Wireless customers have portable voice communications service and as such can take the service outside CORR Wireless’s designated ETC service area. As a result, most, and in some cases all, of an CORR Wireless customer’s usage will occur *away* from such customer’s billing address. Indeed, much usage may occur outside the particular study area for which CORR Wireless is seeking high cost support. It is not in the public interest for any CMRS carrier to receive high cost support based solely on a rural billing address regardless of whether that customer uses his telephone in the rural area, *or even has wireless coverage at his residence*.

Until CMRS carriers are required to monitor subscriber usage and terminate universal service support for those subscribers who actually use the service outside the designated service area, CETCs will be motivated to seek high levels of per-line support. CORR Wireless will obtain customers located in rural ILEC territory; those customers will primarily use their CORR Wireless service in locations well beyond the geographic constraints of the area designated for support; and, ultimately high cost support will be paid to CORR Wireless for services used in low-cost, urban areas. Because of this aforementioned scenario – which is not only possible but also probable, CMRS carriers must not be granted ETC status in the service areas of Rural ILECs until adequate controls are in place. Otherwise, carriers like CORR Wireless will receive support for which they will not be accountable in contravention of Section 254 and this Commission’s articulated goals. “In particular, we intend to develop a long-term plan that *better targets support*

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<sup>27</sup> 1996 Act.

*to carriers serving high-cost areas*, while at the same time recognizing the significant differences among rural carriers, and between rural and non-rural carriers.”<sup>28</sup> This is most critical in cases where the carrier seeks the designation of a service area other than that of the incumbent rural LEC.

The windfall of CMRS carriers may be the downfall of the Universal Service Fund. If CMRS carriers like CORR Wireless are routinely granted ETC status without any Universal Service Fund protections in place, the improperly distributed support may actually prevent much needed support from ever reaching true high-cost, rural areas and harm consumers located in those areas. Even if the Alabama Rural LECs continue to receive support for providing an access line to the same customer, the resulting demand on universal service funding could raise the cost of these support mechanisms to an unsustainable level, jeopardizing the very goal that the fund was designed to achieve. Some mechanism must be put in place that balances promoting entry in the high cost, rural areas and uneconomic motivation to competition.<sup>29</sup> It is not enough to base

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<sup>28</sup> *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket 96-45 and Report and Order, CC Docket 00-256, 16 F.C.C.R. 11,244 (2001) (“*Fourteenth Report and Order*”), para. 8 (footnote omitted).

<sup>29</sup> See, *Petitions for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Order on Reconsideration, CC Docket 96-45, 16 F.C.C.R. 19,144 (2001). Statement of Commissioner Kevin J. Martin, Approving in Part, Concurring in Part and Issuing a Statement.

an ETC grant on the premise that a solution to these problems will be found through the current Joint Board proceedings.

**C. Granting of ETC Status to CORR Wireless will reduce investment in infrastructure, raise rates or reduce service quality to consumers in rural areas.**

In the very first order of the Commission addressing the implementation of the 1996 Act, the Commission declared that it would seek to reform universal service support “because the current system distorts competition in those markets.”<sup>30</sup> Simply put, the outcome described above also distorts competition in rural markets, by allowing CORR Wireless to obtain universal service support for the provision of service outside of the high cost area, and without applying such support to the provision of universal service in the areas for which it is targeted. This is incompatible with the statutory mandates of Section 254.

The Rural Alabama LECs are aware of the Commission’s prior disagreement with the assertions of petitioners Golden West Telephone Cooperative, Project Telephone Company and Range Telephone Company in their *Petition for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*<sup>31</sup> as well as the assertions of petitioners Chugwater Telephone Company, Range Telephone Cooperative, Inc. and RT Communications, Inc. in their similar *Petition for Reconsideration*

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<sup>30</sup>*Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, CC Docket Nos. 96-98 and 95-185, 11 F.C.C.R. 15,499, para. 5 (footnotes omitted).

<sup>31</sup> Golden West et al. Petition for Reconsideration (filed January 25, 2001).

*and/or Clarification*<sup>32</sup> alleging that “competition may erode their customer base forcing higher rates to remaining customers”.<sup>33</sup> For this reason, the Alabama Rural LECs have attempted to underscore why targeted competition should not be sponsored by the Universal Service Fund. The Alabama Rural LECs respectfully assert that, in this instance, Section 214(e) is, by itself, insufficient to protect them and their customers from the deleterious effects of “cream skimming” by new entrants.<sup>34</sup>

It is important to remember that CMRS Carriers, unlike the Rural Alabama LECs, are not subject to price regulation for basic services. Currently, profitable CMRS carriers are already using this regulatory advantage by pricing their service packages at attractive rates despite not receiving any federal universal service funding. System economics will inexorably drive CORR Wireless and other CMRS providers to offer more attractive bundled service packages to customers located only in certain profitable submarkets in the service territory of the Rural Alabama LECs, such as along a major highway or in an urban suburb. With its more lucrative customers lost, the Rural ILECs will then be required to spread their costs over a diminishing customer base. Testimony in the *Generic Hearing on Local Competition*, APSC Dockets No. 24499, 24472, 24030, and 24865 established the reliance of many rural LECs in Alabama on a

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<sup>32</sup> Chugwater et al. Petition for Reconsideration and/or Clarification (filed January 25, 2001).

<sup>33</sup> *Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Order on Reconsideration, CC Docket 96-45, 16 F.C.C.R. 19,144 (2001) (“*Wyoming Order on Reconsideration*”) at para. 19.

<sup>34</sup> *Compare, Wyoming Order on Reconsideration* at para. 12 (discussing the elimination of a concern regarding “cream skimming” due to the enactment of disaggregation options).

few large business customers. The impact of such “cream skimming” will, inevitably, result in higher rates or increased demands on universal service to keep rates “reasonably comparable” as required by the Act.

Existing disaggregation options do not sufficiently address the aforementioned rate spiral caused by the pricing and service flexibility enjoyed by CMRS carriers. Unlike other states, none of the Alabama Rural LECs serve large, geographically dispersed service areas, which might justify consideration of a smaller area for universal service support. The APSC has required the Alabama Rural LECs to make substantial investments in plant to offer ubiquitous service throughout their service areas. This policy should be changed only after careful review and presentation of evidence by CORR Wireless that the interests of rural customers will not be harmed by effectively allowing telephone companies to “pick and choose” which areas within existing rural telephone service territories they will offer basic services using universal service support.

### **III. ANY ETC DESIGNATION GRANTED TO CORR WIRELESS IN RURAL AREAS MUST BE GRANTED AT THE STUDY LEVEL.**

Corr Wireless specifically limits its petition for ETC designation to only those rural wireline study areas completely contained within its licensed service territory, therefore, this issue should not be considered by the Commission. However, out of an abundance of caution, the Alabama Rural LECs wish to underscore their opposition to any effort to redefine the affected rural telephone company Study Areas. The Act provides that, in the case of a rural telephone company, the “Service Area” for federal universal service support purposes “means such

company's 'Study Area,' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of Service Area for such company."<sup>35</sup> Should Corr Wireless' Petition be granted, the Bureau must grant it at the study area level only.

#### **IV. IMPORTANT POLICY CONSIDERATIONS RELATING TO THE FUNDING OF MULTIPLE ETCS AND MULTIPLE LINES HAVE BEEN REFERRED TO THE JOINT BOARD.**

In its *Joint Board Referral*, the Commission requested the Federal-State Joint Board on Universal Service to review certain of the Commission's rules relating to the high-cost universal service support mechanisms to ensure that the dual goals of preserving universal service and fostering competition continue to be fulfilled. The Commission asked the Joint Board to examine three specific areas:

- High-cost support levels in study areas with competitive Eligible Telecommunications Carriers (CETCs),
- Support for "second" lines, and
- The process for designating CETCs.<sup>36</sup>

Regarding the level of support, the Commission notes that under current rules CETCs receive the same per-line support as the incumbent. The Commission also states that some parties have argued that this creates a "windfall" for CETCs, while others have argued that this is

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<sup>35</sup> See 47 U.S.C. 214(e)(5).

<sup>36</sup> *Joint Board Referral* at paragraph 1.

necessary to preserve “competitive neutrality”.<sup>37</sup> The Commission has directed the Joint Board to:

- Review the methodology for calculating support for ETCs in competitive study areas, and
- Examine the rules governing calculation of high-cost support for CETCs using UNEs, and
- Address the current rules that cap the funds available to rural ILECs while not capping funds to CETCs. Specifically, the FCC asks the Joint Board to address the potential benefits and costs of modifying these rules for stability, predictability and sufficiency of the fund, and for competitive neutrality, and
- Consider whether modification in procedures for determining the location of a line served by a mobile wireless provider (i.e., the billing address) is necessary.<sup>38</sup>

Regarding support for multiple lines and carriers, the Commission notes that under current rules all residential and business lines provided by all ETCs are eligible for high-cost support. The Commission asks the Joint Board to:

- Consider the extent to which supporting second lines impacts the size of the universal service fund, and
- Consider whether the goals of section 254 would be served if support were limited to a single connection to the end-user – whether provided by the incumbent or the CETC, and
- Consider whether such a rule would be competitively neutral and how it would impact competition.<sup>39</sup>

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<sup>37</sup> *Id.* at paragraph 7.

<sup>38</sup> *Id.* at paragraphs 5 through 9.

<sup>39</sup> *Id.*

The Commission also notes that some parties have claimed that the current system has hampered the emergence of competition in rural areas, while others have suggested that state commissions should impose similar universal service obligations on ILECs and CETCs. In this regard, the Commission asks the Joint Board to:

- Consider whether it is advisable to establish federal processing guidelines for ETC applications, and
- If so, what should be included in such guidelines, and
- To what extent should the FCC provide additional guidance on the impact of the disaggregation of support on the designation of a service area other than the ILECs study area?<sup>40</sup>

Each of the items that the Commission has requested the Joint Board to examine will have a significant impact on the further consideration of designation of competitive ETCs, and on the expectations of all ETCs as to the high-cost funding that they will receive. The public interest criteria required for grant of the applications cannot be applied without consideration of these issues. For this reason, pending full Commission review of these issues, it is premature for the WCB to designate any additional ETCs in rural areas like those served by the Alabama Rural LECs. These concerns should not be swept aside based on the assumption that the Joint Board process will result be a magic formula that eliminates any harm associated with unlimited ETC designations in rural areas.

For example, as noted previously, under current application of the Commission's rules all lines provided by any ETC, whether the incumbent or a competitor, receive funding. Should the Commission decide to limit funding to one "primary" line per customer location this will



significantly change the amount of funding carriers will receive. A carrier that may have been willing to commit to construct facilities to serve all customers in its service area under the expectation of funding for all existing and future lines, may face different economics and make different decisions if it will only receive funding for lines that are deemed to be “primary” lines through some as yet unknown process. A change in the rules regarding second lines could also substantially affect the impact of a rural ETC grant on rural carriers situated like the Alabama Rural LECs. Similarly, under current application of the rules, wireless carriers receive the same per-line funding as the wireline incumbent. The Commission has asked the Joint Board to examine whether this continues to be appropriate.<sup>41</sup> In the event that the Commission finally determines that different funding amounts should be provided to wireless carriers this could likewise affect their ability and willingness to commit to investment in additional plant and facilities.

The nature of the mobile services provided by CMRS Carriers such as CORR Wireless highlights the importance of this issue, because such carriers will obtain customers with residences located in rural ILEC territory; those customers will primarily use their wireless service in locations well beyond the geographic constraints of the area designated for support; resulting, ultimately, in high cost support paid to the wireless carrier for services used in low-cost, urban areas.

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<sup>40</sup> *Id.* at para. 10.

<sup>41</sup> *Id.* at para. 6.

The continued designation of multiple CMRS carriers as ETCs in rural areas undeniably raises service issues that relate directly to the public interest determination. These issues should not be ignored simply on the hope that they will be addressed at some point in the future. Recently, the Commission declined “to adopt a rule that would require resolution on the merits of any request for ETC designation within six months of the filing date.”<sup>42</sup> Thus, there is no reason to resolve the merits of this Petition prior to the resolution of the issues pending in the *Joint Board Referral*.

Moreover, on July 14, 2003, a majority of the Commission again acknowledged the problems associated with the historical application of the current ETC designation process and urged expeditious resolution of these issues in the *Portability Proceeding* initiated in response to the *Joint Board Referral*.<sup>43</sup> Commissioners Adelstein and Abernathy specifically expressed concern that “ETC designation process – and in particular the public interest analysis – has been conducted in an inconsistent sometimes insufficiently rigorous manner.”<sup>44</sup> They also underscored the need to insure that companies such as the Alabama Rural LECs “are not subject to a framework that unintentionally undercuts their ability to perform their critical universal service

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<sup>42</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Commonwealth of Northern Mariana Islands, Petitions for Reconsideration filed by Crow Tribal Council, et.al., Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking*, CC Docket 96-45, (rel. May 21, 2003) at para. 2.

<sup>43</sup> *Federal-State Joint Board on Universal Service; Order and Order on Reconsideration*, CC Docket 96-45 (rel. July 14, 2003).

<sup>44</sup> *Id.* at Joint Statement of Commissioners Kathleen Q. Abernathy and Jonathan S. Adelstein.

function.”<sup>45</sup> Finally, the Commissioners noted that pending regulatory proceedings might have a substantial impact on the circumstances surrounding pending ETC applications.<sup>46</sup> The problems cited by these Commissioners should not be exacerbated by yet another rural ETC designation pending resolution of the *Portability Proceeding*.

## **V. TECHNOLOGICAL NEUTRALITY MUST BE APPLIED WHEN REVIEWING WHETHER A WIRELESS CARRIER MEETS SECTION 214(e) REQUIREMENTS**

While the Commission has rejected the idea that CMRS service providers are ineligible for universal service support and has noted that “competitive neutrality includes technological neutrality”, the Commission has not disregarded the requirement that a CMRS provider meet the Section 214(e) requirements.<sup>47</sup> The Alabama Rural LECs assert that CORR Wireless meets the statutory and regulatory requirements for ETC designation by the FCC pursuant to Section 214(e)(6)<sup>48</sup> as set forth in the FCC’s Section 214(e)(6) Public Notice<sup>49</sup> only because those requirements are currently applied in a way that is not technologically neutral.

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Western Wireless Wyoming Order* at para. 11.

<sup>48</sup> 1996 Act.

<sup>49</sup> *Procedures for FCC Designation Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1996*, Public Notice, 12 FCC Rcd 22947 (“*Public Notice*”).

A common carrier designated as an ETC may not receive universal service support unless the carrier offers the services supported by universal service support mechanisms, either through the use of its own facilities or some combination of its own and the resale of another carrier's services.<sup>50</sup> The services designated for support include, among others, voice grade access to the public switched network and local usage.<sup>51</sup>

Although CORR Wireless asserts that it meets the voice-grade access and signaling requirements because "it currently provides, or intends to provide, voice-grade access to the public switched telephone network" and "it uses, or intends to use, out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling"<sup>52</sup>, there is no evidence that it provides ubiquitous single-party voice grade service in all of the areas where it requests designation as a second (and for Butler Telephone Company, the fifth) ETC.

While the Bureau has previously referenced a finding by the Commission that "a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its designation as an ETC should not preclude its designation"<sup>53</sup>, each of the Rural LECs was required to demonstrate that they met the universal service criteria prior to becoming eligible

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<sup>50</sup> 47 USC § 214(e)(1)(A).

<sup>51</sup> 47 CFR § 54.101(a) (1998).

<sup>52</sup> Corr Wireless Petition at 5 and 6.

<sup>53</sup> RCC Order at para. 16; Cell South Order at para. 17.

to receive funding<sup>54</sup> and is subject to continuing APSC monitoring of the use of universal service funds.<sup>55</sup> If wireless carriers are not subject to the same requirements, then the outcome is preferential treatment for wireless technology. A mere affirmative statement from a wireless carrier that it “will” provide such service should no longer be enough, since it is a meaningless gesture in the current regulatory environment.

In addition to the requirement that a common carrier offer the services supported by universal service support mechanisms, it must also advertise the availability of those services and the charges for them using media of general distribution.<sup>56</sup> In other words, “Congress recognized that merely providing a service is not enough to ensure that the needed support is received. Rather, it imposed an obligation to advertise the availability of the supported services and the charges for those services.”<sup>57</sup>

The Commission has discussed the added importance of advertising Lifeline and Link Up services to rural customers and has codified the advertising requirement in its rules addressing

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<sup>54</sup> *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Fifth Report and Order, APSC Docket 25980, (rel. Dec. 18, 1997).

<sup>55</sup> *Implementation of the Universal Service Requirements Of Section 254 of the Telecommunications Act of 1996*, Further Report and Order, APSC Docket 25980, (rel. Dec. 20, 2001).

<sup>56</sup> 47 USC § 214(e)(1)(B); 47 CFR 54.201(d)(2) (1999).

<sup>57</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas*. Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket 96-45, 15 F.C.C.R. 12208, at para. 76.

those programs.<sup>58</sup> Those amended rules require that the two programs be publicized “in a manner reasonably designed to reach those likely to qualify for those services.”<sup>59</sup> In fact, the Commission has concluded that carriers must be encouraged to undertake special certain efforts beyond regional advertising and the placing locally of posters in order to meet the publicity requirements attached to Lifeline and Link Up services.<sup>60</sup> While the Commission has not prescribed specific methods for achieving the goal of effective advertising, the Commission has required that ETCs “identify communities with the lowest subscribership levels in its service territory and make appropriate efforts to reach qualifying individuals within their communities.”<sup>61</sup> Again, as long as wireless carriers are only required to “commit” to advertising the supported services, then one technology is indeed being favored over the other – wireless over wireline, in violation of the principle of competitive neutrality.

## **VI. CONCLUSION.**

CORR Wireless does not meet the statutory and regulatory requirements for ETC designation and has not demonstrated that the public interest would be served by its designation as an additional ETC in the service areas of the Alabama rural telephone companies involved.

Accordingly, the Alabama Rural LECs urge the Bureau to:

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<sup>58</sup> *Id.* at para. 76-80; 47 CFR §§ 54.405(b) and 54.411(d) (2001).

<sup>59</sup> *Id.* at para. 78; *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at para. 79.

- refrain from granting CORR Wireless's ETC petition until meets all the requirements of Section 214 and applicable state requirements;
- refrain from granting CORR Wireless's ETC petition until sufficient safeguards are in place to guarantee that the public interest is not harmed by an undermining of the Universal Service Fund and the resulting reduction in infrastructure investment, increase in rates and reduction in service quality available to high-cost, rural areas in Alabama, and;
- delay any ruling on CORR Wireless's designation request indefinitely, or, in the alternative and at a minimum, delay any ruling on CORR Wireless's designation request indefinitely with regard to that portion of the request that encompasses areas of the state of Alabama served by rural carriers.

Respectfully submitted,  
Alabama Rural LECs

By: 

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July 28, 2003

## CERTIFICATE OF SERVICE

I, Leah S. Stephens, hereby certify that on this 28<sup>th</sup> day of July, 2003, a true and correct copy of the above and foregoing COMMENTS OF THE ALABAMA RURAL LOCAL EXCHANGE CARRIERS has been forwarded by U.S. Mail, first class, postage prepaid and properly addressed to:

Chairman Michael K. Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B201  
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
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Washington D.C. 20554

Commissioner Kevin J. Martin  
Federal Communications Commission  
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Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A302  
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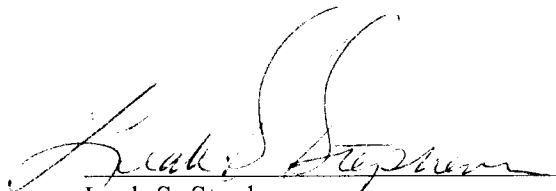
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Walter L. Thomas, Jr., Secretary  
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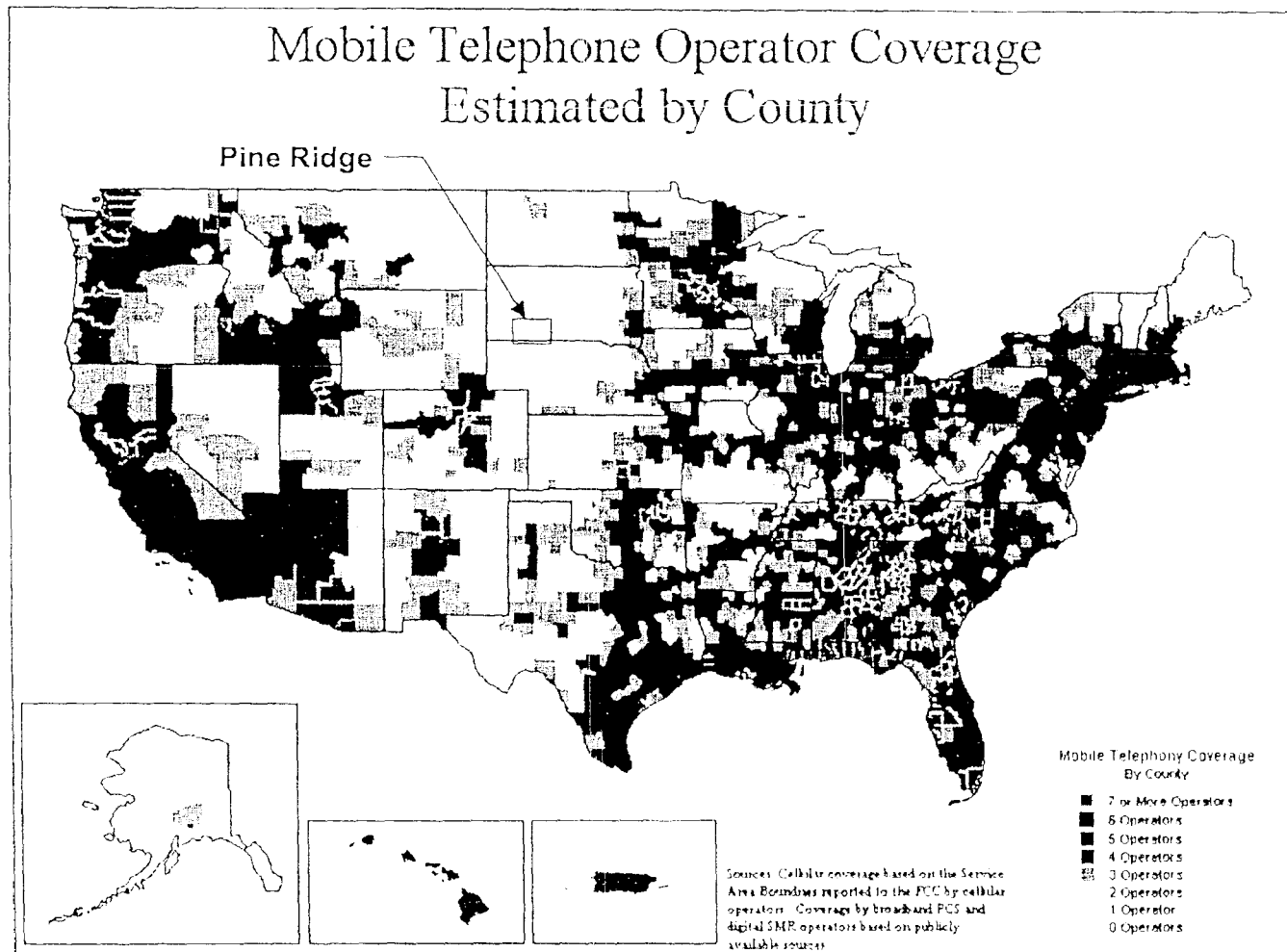
Leah S. Stephens

\*Via Overnight Delivery



## EXHIBIT A

EXHIBIT A



Source: 7<sup>th</sup> Annual Report on CMRS Competition